

**CITY COUNCIL
ATLANTA, GEORGIA**

13.1

13-O-1021

AN ORDINANCE BY CITY UTILITIES COMMITTEE TO AMEND VARIOUS SECTIONS OF CHAPTER 74, ARTICLE VI, FLOOD AREA REGULATIONS OF THE CITY OF ATLANTA CODE OF ORDINANCES FOR THE PURPOSE OF COMPLYING WITH THE CONDITIONS TO PARTICIPATE IN THE NATIONAL FLOOD INSURANCE PROGRAM AS REQUIRED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY; TO PERMIT CONSTRUCTION AND LAND DEVELOPMENT IN HISTORICALLY MODIFIED FLOODPLAINS UNDER APPROPRIATE CONDITIONS; TO CONTINUE TO PROHIBIT CERTAIN DEVELOPMENT IN TRADITIONAL FLOODPLAINS; AND FOR OTHER PURPOSES.

Review List:

Jo Ann Macrina	Completed	04/27/2013 8:00 PM
Marc Goncher	Completed	04/29/2013 2:54 PM
Mayor's Office	Completed	04/30/2013 10:01 AM
Office of Research and Policy Analysis	Skipped	04/30/2013 12:50 PM
City Utilities Committee	Completed	05/08/2013 5:10 PM
Atlanta City Council	Completed	05/17/2013 1:37 PM
Office of Research and Policy Analysis	Completed	05/10/2013 12:37 PM
City Utilities Committee	Completed	05/17/2013 6:23 PM
Atlanta City Council	Pending	

HISTORY:

04/30/13	City Utilities Committee	REFERRED TO COMMITTEE	Next:
05/14/13			

RESULT:	REFERRED TO COMMITTEE [UNANIMOUS]	Next: 5/14/2013 9:30 AM
MOVER:	Howard Shook, Chair	
AYES:	Wan, Shook, Archibong, Adrean, Martin, Smith, Watson	

05/06/13	Atlanta City Council	REFERRED TO COMMITTEE
----------	----------------------	-----------------------

RESULT:	REFERRED TO COMMITTEE [UNANIMOUS]	Next: 5/14/2013 9:30 AM
AYES:	Watson, Wan, Martin, Smith, Shook, Winslow, Moore, Willis, Young Jr., Sheperd, Bottoms, Hall, Bond, Archibong, Adrean	

05/14/13	City Utilities Committee	FORWARDED
----------	--------------------------	-----------

RESULT:	FORWARDED [3 TO 3]	Next: 5/20/2013 1:00 PM
MOVER:	Carla Smith, Councilmember, District 1	
AYES:	Howard Shook, Carla Smith, Aaron Watson	
NAYS:	Alex Wan, Natalyn Mosby Archibong, Yolanda Adrean	
AWAY:	Clarence "C. T." Martin	

Certified by Presiding Officer	Certified by Clerk
Mayor's Action	

See Authentication Page Attachment

**ORDINANCE
BY CITY UTILITIES COMMITTEE**

AN ORDINANCE BY CITY UTILITIES COMMITTEE TO AMEND VARIOUS SECTIONS OF CHAPTER 74, ARTICLE VI, FLOOD AREA REGULATIONS OF THE CITY OF ATLANTA CODE OF ORDINANCES FOR THE PURPOSE OF COMPLYING WITH THE CONDITIONS TO PARTICIPATE IN THE NATIONAL FLOOD INSURANCE PROGRAM AS REQUIRED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY; TO PERMIT CONSTRUCTION AND LAND DEVELOPMENT IN HISTORICALLY MODIFIED FLOODPLAINS UNDER APPROPRIATE CONDITIONS; TO CONTINUE TO PROHIBIT CERTAIN DEVELOPMENT IN TRADITIONAL FLOODPLAINS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) has been granted such powers as may be necessary and proper to promote the safety, health, peace, and general welfare of the city and its inhabitants pursuant to Article IX, Section II of the Constitution of the State of Georgia, O.C.G.A. § 36-35-1 *et seq.*, and the Atlanta City Charter §§ 1-102(b) and 1-102(c)(42); and

WHEREAS, as a condition of participation in the National Flood Insurance Program (“NFIP”) and for related financial assistance, the City is required to adopt an adequate floodplain ordinance with effective enforcement provisions consistent with federal standards to reduce or avoid future flood losses pursuant to 42 U.S.C. § 4001 *et seq.*, and 44 CFR Parts 59, 60, 65 and 70; and

WHEREAS, the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* requires that the City of Atlanta adopt and administer the Metropolitan North Georgia Water Planning District's ("District's") Model Floodplain Management / Flood Damage Prevention Ordinance (2006) or an equally effective floodplain management ordinance; and

WHEREAS, the City analyzed and mapped flood prone areas associated with stormwater runoff within its combined sewer basins under an agreement authorized by Resolution 06-R-2299 and provided this information to the Federal Emergency Management Agency (“FEMA”); and

WHEREAS, the City inventoried stormwater structures and analyzed and delineated Future-Conditions Floodplains pursuant to work authorized by Resolutions 10-R-1260, 08-R-0224 and 06-R-2604 and provided this information to FEMA; and

WHEREAS, FEMA completed a re-evaluation of flood hazards in the City and on October 7, 2011, provided the City with Preliminary copies of the updated Flood Insurance Study report and Flood Insurance Rate Map that identify existing flood hazards in the City; and

WHEREAS, the proposed flood hazard determinations for the City were published in *The Daily Report* on April 27, 2012 and May 4, 2012, and in the Federal Register, at Part 67, Volume 77, Page 18839 on March 28, 2012; and

WHEREAS, the statutory 90-day appeal period ended without any appeals of the proposed flood hazard determinations received by FEMA during that time and thus, the flood hazard determinations for the City are considered final by FEMA; and

WHEREAS, the Flood Insurance Rate Map for the City will become effective on September 18, 2013 and that prior to this date, the City is required as a condition of continued eligibility in the National Flood Insurance Program (“NFIP”) to adopt or show evidence of adoption of floodplain management regulations that meet the standards of Paragraph 60.3(d) of the NFIP regulations (44 CFR 59, *et seq.*); and

WHEREAS, for the first time in the City's history, FEMA will be adopting comprehensive flood maps for the historically modified floodplains that exist throughout many parts of the City including in particular the City's combined sewersheds; and

WHEREAS, it is in the best interests of the City to continue existing prohibitions against construction in traditional floodplains, to permit construction and land development in historically modified floodplains in a manner that minimizes the risk to life and property from flooding of homes and businesses by placing reasonable restrictions and limitations on such development, to codify existing practices and policies, and to clarify ambiguities; and

WHEREAS, the Commissioner of the Department of Watershed Management recommends that the following sections of the City of Atlanta's Code of Ordinances be amended in order to effectuate the changes outlined above.

NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

Section 1. Section 74-201 of the City Code of Ordinances is hereby deleted and replaced in its entirety with following:

"Sec. 74-201. - Intent and disclaimer.

(a) *Intent.* The intent of this Article is to regulate and restrict uses and structures within both traditional and historically modified floodplain areas of the City of Atlanta in order to protect life and property, to prevent or minimize the hazards and damage which follow periods of severe inundation and to reduce the public cost of rescue efforts, relief efforts and flood control activities made necessary by such inundation; to protect the natural function and character of the traditional floodplain and surrounding areas; and to enable owners of property within the City of Atlanta to qualify for national flood insurance.

(b) *Disclaimer of liability.* The Atlanta City Council finds the degree of flood protection required by this Article to be reasonable and consistent with historically established and nationally accepted levels of protection based on scientific and engineering practices. Larger floods can and will occur; flood heights may be increased by human-made or natural causes. This Article does not imply that land outside the floodway, traditional floodplain, historically modified floodplain, special flood hazard area, or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the City or by any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made hereunder."

Section 2. Section 74-202 of the City Code of Ordinances is hereby deleted and replaced in its entirety with following:

"Sec. 74-202. - Flood insurance study and maps adopted.

The Federal Emergency Management Agency flood insurance study, flood hazard boundary map and flood insurance rate map, for the City of Atlanta, Georgia, revised June 22, 1998, and as it may be revised, shall constitute the official flood maps for the City. Revisions of such maps shall include but not be limited to future conditions maps. All land shown on said maps as lying within a "special flood hazard area," and all other land subject to inundation during the base flood, as confirmed by a flood study or a field run survey, shall be subject to the regulations set forth in this Article."

Section 3. Section 74-203 of the City Code of Ordinances is hereby deleted and replaced in its entirety with following:

“Sec. 74-203. <javascript:void(0)> - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ancillary structures means structures that are not principal structures and are not intended for occupancy. Such structures shall include, but not be limited to, fences, carports, tool sheds, decks, patios, pools, playgrounds, and picnic facilities.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year, also known as the 100-year flood.

Base flood elevation means the highest water surface elevation anticipated at any given point during the base flood.

Combined sewershed means a sewershed with sewers that were designed to collect and transmit both stormwater and wastewater and that functioned as combined sewers as of September 24, 1998, as determined by the Commissioner.

Commissioner means the Commissioner of the Department of Watershed Management, or an authorized designee.

Development means a land development or land development project.

Elevated structure means an existing structure which has been raised or rebuilt in compliance with this Article.

Flood protecting means any combination of structural and non-structural additions, changes, or adjustments to a structure which reduce or eliminate flood damage to real estate, improved real property, water and sanitary facilities, or structures and their contents.

Floodway means any channel through which water passes at depths or velocities capable of discharging a base flood without increasing the elevation to which floodwaters would rise by more than one foot anywhere in a special flood hazard area.

Footprint area means the enclosed area of the horizontal dimensions of a structure as defined by the exterior walls and as projected on the ground. Footprint area shall not include any decks, patios, porches, carport, or multiple floors for the purpose of this calculation.

Highest observed flood means the water surface elevation of the highest flood on record in the Department of Watershed Management or as measured from the lowest grade adjacent to the structure to the top of the high water mark.

Historically modified floodplain means an area, in a combined sewershed, in which significant portions of the historic “natural” stream have been enclosed in a pipe (excluding bridges, roadway culverts and short pipe segments) and is subject to periods of severe inundation.

Infrastructure means any public or private road, bridge, drainage system, sewer, water main or other utility and related appurtenances.

Land development means any land change, including, but not limited to, clearing, digging, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving, or any other installation of impervious cover.

Land development activities means those actions or activities which comprise, facilitate or result in land development.

Land development project means a discrete land development undertaking.

Lowest floor means the lowest enclosed area of a structure, including the basement. An unfinished, flood-resistant area below an elevated structure used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such area is built in compliance with this Article.

Mapped floodplain means those areas of land subject to periods of severe inundation which are shown on the official flood maps of the City and which are subject to the regulations contained in this Article.

Multi-family residential structure means multiple dwellings and lodgings as defined in Atlanta City Code § 16-29.001(12)(b).

Non-residential structure means any structure that is not a single-family residential structure or a multi-family residential structure. Examples of non-residential structures include, but are not limited to, restaurants, service stations, shopping centers, office buildings, theaters, warehouses, manufacturing facilities, food processing facilities, hotels, libraries, churches, schools, and municipal, county, state, and federal government buildings.

Sewerbasin means all portions of the City’s Wastewater Collection and Transmission Systems tributary to and hydraulically linked to a trunk sewer entering a wastewater treatment facility. Each sewerbasin in the City is typically independent of other sewerbasins.

Sewershed means a subdivision of a sewerbasin that typically consists of hydraulically linked sewers that are tributary to a point in the sewer system.

Single-family residential structure means any single-family dwelling as defined in Atlanta City Code § 16-29.001(12)(a).

Special flood hazard area means the land subject to a one percent or greater chance of flooding in any given year. This includes all floodplain and flood prone areas at or below the base flood elevation (including A, A1-30, A-99, AE, AO, AH, and AR on the flood hazard boundary map or the flood insurance rate map), and all other areas subject to inundation during the base flood.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the value of the structure before the damage occurred, as provided in 44 C.F.R. § 59.1.

Substantial improvement means any combination of repairs, reconstruction, alteration, or improvements to a structure taking place during a 10-year period in which the cumulative cost equals or exceeds 50 percent of the value of the structure prior to the improvement, as provided in 44 C.F.R. § 59.1 and Section 2 of the Metropolitan North Georgia Water Planning District's Model Floodplain Management/Flood Damage Prevention Ordinance (2006).

Traditional floodplain means any area of land presently having natural or man-made contours of elevation at or below the base flood elevation shown on the flood maps and those areas of land which are not so shown on the flood maps where inundation is likely to occur during a base flood as determined from evidence of prior flooding or as determined by hydrologic studies to establish the probable depth of such floodwaters.

Unmapped floodplain means those areas of land subject to periods of severe inundation which are not shown on the official flood maps of the City, which are otherwise subject to the regulations contained in this Article.

Value of the structure means (1) the actual cash value of the structure as set out in "Table 100 Building Valuation Data" at § 104.2 of the Atlanta City Code, and as permitted by FEMA Publication 213 page 10, or (2) the appraised value of the structure according to the property tax records in the Fulton County or DeKalb County tax assessor database immediately prior to the start of the initial repair or improvement. In the event there is a conflict between these two values, the lower value of the structure shall apply, in accordance with Atlanta City Code § 1-2."

Section 4. Section 74-204 of the City Code of Ordinances is hereby deleted and replaced in its entirety with following:

“Sec. 74-204. - Permits required.

- (a) *Permit required.* Use of lands and buildings, and construction, reconstruction, repair, modification or demolition of any structure within all floodplains, including special flood hazard areas, shall require review and approval of a permit by the Commissioner.
- (b) *Flood study or field run survey required.* The Federal Emergency Management Agency flood maps, more particularly described in Sec. 74-202, adopted by the City are used for general reference purposes only. A flood study or a field run survey may be required to determine the location and extent of the floodplain area on a specific parcel.
 - (i) Flood study. In an unmapped floodplain or in a mapped floodplain where elevation has not been established, a flood study may be required in order to establish the base flood elevation. Such a flood study shall address, at a minimum, impact to upstream, downstream and adjacent properties, and the free flow of flood waters.
 - (ii) Field run survey. In order to establish the horizontal extent of the vertical floodplain elevation, a field run survey may be required to establish the actual location of the limit when proposed development is proximate to the limits of a floodplain/floodway.
 - (iii) A flood study or field run survey required under this subsection shall be certified by either a professional engineer or registered land surveyor.
- (c) *Review and approval.* Any proposal which includes any of the activities described in this Article shall be submitted to the Commissioner for review before any such activity is commenced. The Commissioner may authorize the approval of any of such activities upon a finding, based on detailed plans and specifications submitted with the proposal, that the activity can be completed and occupied or used in full compliance with the requirements of this Article. No part of any such activity shall be commenced before such permit approval has been issued and all other permits and licenses required by applicable law have been issued or obtained.
- (d) *Permit revocation.* The Commissioner may recommend the revocation of any such permit when the Commissioner determines the activity is not being accomplished, or that the land is not being used or occupied, as shown on the plans and specifications approved by the Commissioner. A permit approval so revoked may be reinstated upon application by the holder under such rules and conditions as are established by the Commissioner consistent with the requirements of this Article and other applicable laws.
- (e) *Protection of existing flood storage and from flooding.* The Commissioner shall not, by authorizing the approval of a permit under the authority of this Article, authorize any use of land, any extension or enlargement of a use of land which existed before the original date of enactment of the provisions of said Article, or the commencement of any of the activities described in this Article, where the effect

thereof would be to decrease the volume of existing flood storage on that land or to increase flooding conditions upstream, downstream or adjacent to that land.

- (i) *Protection of floodways.* The floodway shall be that as defined in the flood insurance study, City of Atlanta, Georgia, Fulton and DeKalb County, Federal Emergency Management Agency, revised June 22, 1998, and as it may be subsequently revised or extended. On those watercourses and rivers regulated hereunder where the floodway has not been defined in the said flood insurance study and until such time as these watercourses and rivers are defined in an officially adopted or revised flood insurance study, the floodway shall be defined as the channel of the watercourse or river and the adjacent areas of the defined or undefined floodplain that must be reserved in order to discharge the 100-year base flood without cumulatively increasing the water surface elevation more than one foot upstream of, downstream of, or at the point being considered. No fill or encroachments shall be placed within the defined floodway that would impair the ability to carry and discharge the waters resulting from the 100-year base flood.
- (ii) *Floodplain protection.* The Commissioner shall not authorize the approval of any permit authorizing the placement of fill or stored materials, or the construction of any building or other structure within the floodplain. Earth-disturbing activities in the floodplain shall be permitted only when the resulting configuration shall allow stormwater to enter the floodway by sheet flow (not channelized flow) and results in no loss of existing flood volume. Any earth-disturbing activities within a floodplain shall be subject to requirements of stream bank buffer limits and should be constructed using best management practices for soil erosion and sedimentation control. The use of compensating excavation or contouring procedures to modify flood hazard limits may only apply to install necessary public roadway and utilities within the flood limits to support existing and new property(s) which are not within the flood limits.

All applications for permits issued by the Commissioner which would allow any use or construction wholly or partly in a special flood hazard area shall include detailed plans and specifications which demonstrate that no expansion of a special flood hazard area would result from the work which would be authorized by any such permit. No such permit shall authorize any proposed use or construction which would have a finished elevation less than two feet higher than the nearest base flood elevation and that would be closer than 15 feet from the nearest base flood elevation, and no such permit shall be issued until the plans and specifications submitted are in compliance with this Article and have been authorized by the Commissioner. Any comments or requirements endorsed on such plans and specifications or on an addendum thereto, by the Commissioner shall become a part of any permit issued for the work covered by the plans and specifications and shall be enforced as are all other requirements applicable to such permit.

(iii) Reserved.

- (iv) *Modification to existing structures or existing usages of the floodplain in violation of, but predating the provisions of this article.* Minor modifications and routine maintenance of uses and structures which were lawful prior to the original date of enactment of the provisions of this Article, including existing structures, fills, pavements, utilities, manufactured homes, mobile homes, mobile home sites and other facilities, shall be subject to the following restrictions:
 - (A) *Permitted modifications of existing structures or existing usages.* Any modification to an existing usage, when such existing usage is in violation of this Article, that enhances the protection of life or property or which is reasonably necessary to the maintenance and upkeep of the property concerned and which does not extend the scope and magnitude of the existing violation of these regulations, is permitted provided the value of such modification or maintenance does not exceed 50 percent of the value of the structure or total existing usage prior to such modification or maintenance, excluding the value of the land but

including the value of existing structures, utility service connections, fills, pavements, slabs, mobile home sites and other facilities which can be reasonably demonstrated as an integral part of that existing usage.

- (B) *Modifications requiring additional measures.* Any improvement, modification or maintenance and any repairs or reconstruction required by any reason, including damages arising from normal deterioration, flood, other natural act or accident, of any existing usage where such existing usage is in violation of this Article, shall bring that existing usage under the scope of the regulations set forth in this subsection; and that existing usage shall be brought into compliance with this Article, providing that the total value of such improvement, modification, maintenance, repair or reconstruction exceeds 50 percent of the value of the structure or existing usage before such improvement, modification or maintenance or before such flood, other natural act or accident, excluding the value of the land but including the prior value of structures, utility service connections, fills, pavements, slabs, mobile home sites and other facilities which can be reasonably demonstrated as an integral part of the existing usage prior to the event.”

Section 5. Section 74-205 of the City Code of Ordinances is hereby deleted and replaced in its entirety with following:

“Sec. 74-205.1 - Single-family residential structures in traditional floodplain areas.

- (a) *New development.* A new single-family residential structure to be located on property encumbered by a traditional floodplain, floodway, or special flood hazard area shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation. If a new single-family residential structure cannot comply with the 15-foot horizontal requirement, development is prohibited.
- (b) *Substantially damaged or substantially improved structures.* If an existing single-family residential structure located within the traditional floodplain, floodway, or special flood hazard area has sustained substantial damage or is proposed for substantial improvement, the structure shall be relocated not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation.
- (c) *Elevating existing single-family structures.* If, due to site conditions, an existing single-family residential structure cannot comply with the 15-foot horizontal requirement, in accordance with Section 74-205.1(b), the structure may be elevated in accordance with either Section 74-205.5(b) or Section 74-205.5(c); provided however, Section 74-205.5(a) shall apply to all elevated structures regardless of whether Section 74-205.5(b) or Section 74-205.5(c) applies.
- (d) *Flood protecting single-family residential structures.* An existing single-family residential structure that has not been substantially damaged or is not proposed for substantial improvement can be flood protected, in accordance with 74-205.5(d). A new single-family residential structure or an existing single-family residential structure that has been substantially damaged or is proposed for substantial improvement cannot be flood protected in order to comply with the provisions of this Article.”

Section 6. Section 74-205.2 of the City Code of Ordinances is hereby created and shall read as follows:

“Sec. 74-205.2 - Multifamily residential structures in traditional floodplain areas.

- (a) *New development.* A new multifamily residential structure to be located on property encumbered by a traditional floodplain, floodway, or special flood hazard area shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation. If a new multifamily residential structure cannot comply with the 15-foot horizontal requirement, development is prohibited.
- (b) *Substantially damaged or substantially improved structures.* If an existing multifamily residential structure located within the traditional floodplain, floodway, or special flood hazard area has sustained substantial damage or is proposed for substantial improvement, the structure shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation.
- (c) *Elevating existing multifamily structures.* If, due to site conditions, an existing multifamily residential structure cannot comply with the 15-foot horizontal requirement, in accordance with Section 74-205.2(b), the structure may be elevated in accordance with either Section 74-205.5(b) or Section 74-205.5(c); provided however that Section 74-205.5(a) shall apply to an elevated multifamily residential structure regardless of whether Section 74-205.5(b) or Section 74-205.5(c) applies.
- (d) *Flood protecting multifamily residential structures.* An existing multifamily residential structure that has not been substantially damaged or is not proposed for substantial improvement can be flood protected, in accordance with 74-205.5(d). A new multifamily residential structure or an existing multifamily residential structure that has been substantially damaged or is proposed for substantial improvement cannot be flood protected in order to comply with the provisions of this Article.”

Section 7. Section 74-205.3 of the City Code of Ordinances is hereby created and shall read as follows:

“Sec. 74-205.3 - Non-residential structures in traditional floodplain areas.

- (a) *New development.* A new non-residential structure to be located on property encumbered by a traditional floodplain, floodway, or special flood hazard area shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation. If a new non-residential structure cannot comply with the 15-foot horizontal requirement, development is prohibited.
- (b) *Substantially damaged or substantially improved structures.* If an existing non-residential structure located within the traditional floodplain, floodway, or special flood hazard area has sustained substantial damage or is proposed for substantial improvement, the structure shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation.
- (c) *Elevating existing non-residential structures.* If, due to site conditions, an existing non-residential structure cannot comply with the 15-foot horizontal requirement, in accordance with Section 74-205.3(b), the structure may be elevated in accordance with either Section 74-205.5(b) or Section 74-205.5(c); provided however that Section 74-205.5(a) shall apply to an elevated non-residential structure regardless of whether Section 74-205.5(b) or Section 74-205.5(c) applies.
- (d) *Flood protecting non-residential structures.* If, due to structural conditions, an existing non-residential structure cannot comply with the 15-foot horizontal and the two foot vertical requirements in Section

74-205.3(b), an existing non-residential structure may be flood protected in accordance with Section 74-205.5(d).”

Section 8. Section 74-205.4 of the City Code of Ordinances is hereby created and shall read as follows:

“Sec. 74-205.4 -Ancillary structures and infrastructure in traditional floodplain areas.

- (a) *Ancillary structures.* Ancillary structures may be allowed in traditional floodplain areas if designed and constructed to minimize and mitigate impact on the traditional floodplain, allow for stormwater to enter the floodway by sheet flow (not channelized flow) and results in no net loss in flood storage volume. Ancillary structures shall not be allowed in the floodway.
- (b) *Infrastructure.* Infrastructure may be allowed in traditional floodplain areas if designed and constructed to minimize and mitigate impact on the traditional floodplain area. On-site sewage managements systems (septic tanks) and wells are prohibited in traditional floodplains. Stormwater management systems may be allowed only if designed such that there is no net loss in flood plain storage volume. ”

Section 9. Section 74-205.5 of the City Code of Ordinances is hereby created and shall read as follows:

“Sec. 74-205.5 - Standards for elevating and flood protecting structures in traditional floodplain areas.

- (a) *Basic requirements for elevating structures.* The following requirements apply to the elevation of any structure within the traditional floodplain area:
 - (i) Design and construction of elevated structures shall utilize methods and practices that minimize flood damage and current and future encroachment into the floodway and traditional floodplain;
 - (ii) The elevation of the structure's lowest floor shall be the greater of either: three feet above the base flood elevation or two feet above the highest observed flood;
 - (iii) Elevated structures shall be constructed with materials and utility equipment resistant to flood damage in accordance with FEMA Technical Bulletin "Flood Damage-Resistant Materials Requirements" August 2008, or as amended;
 - (iv) The area below the lowest floor of an elevated structure shall be flood resistant, unfinished, and designed with piers or wall openings to facilitate the natural flow of floodwaters under the structure;
 - (v) The unfinished and flood-resistant area below the lowest floor shall remain unoccupied and shall only be used for parking vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area;
 - (vi) Stormwater management facilities and grease traps with backflow prevention devices that are properly designed to be isolated from flood waters may be allowed;
 - (vii) The interior portion of the area below the lowest floor shall not be partitioned or finished into separate rooms; provided however, the minimum area necessary for access to upper floors may be finished with flood damage-resistant materials in accordance with FEMA Technical Bulletin "Flood Damage-Resistant Materials Requirements" August 2008, or as amended;

- (viii) Elevated structures shall be anchored to prevent flotation, collapse or lateral movement of the structure;
 - (ix) Heating and air conditioning equipment and components (including ductwork), electrical, ventilation, plumbing equipment (including water heater), and other service facilities shall be located at least three feet above the base flood elevation or two feet above the highest observed flood (whichever is greater) to prevent water from entering or accumulating within the components during conditions of flooding;
 - (x) Designs for complying with the requirements of this Article shall be certified by either a professional engineer or architect;
 - (xi) Landings and stairs that allow for the natural flow of floodwaters will be allowed for minimum entry access;
 - (xii) If the proposed elevated structure is located in multiple flood zones or if multiple base flood elevations cross the site, the higher or most protective base flood elevation shall take precedence;
 - (xiii) The design shall provide for the drainage of floodwaters in not less than 72 hours pursuant to FEMA Technical Bulletin 1 (August 2008); and
 - (xiv) A file-stamped copy of an elevation certificate filed in the land records of the county in which the property is located shall be submitted to the Commissioner prior to the issuance of a certificate of occupancy. This elevation certificate shall be prepared by a licensed surveyor and shall document the elevation of the lowest floor relative to mean sea level and compliance with the ordinance.
- (b) *Elevation of existing structures via jacking on existing foundation.* An existing structure that has been substantially damaged or is proposed for substantial improvement may be elevated by jacking, intact, on an existing foundation, provided the criteria of Section 74-205.5(a) are met in addition to the following criteria:
- (i) No elevated structure shall exceed the original geometric footprint area or horizontally expand living space into or over the traditional floodplain;
 - (ii) Foundations shall contain a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding as provided in 44 C.F.R. § 60.3 and Section 5 of the Metropolitan North Georgia Water Planning District's Model Floodplain Management/Flood Damage Prevention Ordinance (2006);
 - (iii) The bottom of all openings shall be no higher than one foot above grade; and
 - (iv) Openings may be equipped with screens, louvers or other coverings provided they permit the flow of floodwater in both directions.
- (c) *Elevation of existing structures via demolition and rebuilding on an equivalent footprint area.* An existing structure that has been substantially damaged or is proposed for substantial improvement may be demolished and relocated on the lot such that the passage of water is facilitated or the floodplain is otherwise enhanced or protected, provided the criteria of Section 74-205.5(a) are met in addition to the following criteria:
- (i) No elevated structure shall exceed the original footprint area or increase the net encroachment into or over the floodplain; and

- (ii) Foundations shall be designed to resist anticipated hydrodynamic loads, potential for debris impact, and scour pursuant to FEMA Technical Bulletin 1 (August 2008). Foundations shall be designed with the following criteria:
- (A) The total area of the walls below the base flood elevation exposed to flood waters shall be at least 50 percent open. Wall openings shall be distributed along all walls exposed to flood waters;
 - (B) The bottoms of all wall openings shall be at grade;
 - (C) Garage doors not allowing the natural flow of floodwaters when closed shall not be considered wall openings; and
 - (D) Openings may be equipped with grilles, louvers, or bars provided they allow the natural flow of floodwater in both directions.
- (d) *Flood protecting structures.* Flood protecting structures within the traditional floodplain is generally prohibited, unless expressly authorized by the provisions of this Article. If expressly authorized under the provisions of this Article, a structure may be flood protected in accordance with the following criteria:
- (i) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located three feet vertically beyond the nearest base flood elevation;
 - (ii) Designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, in accordance with the following;
 - (A) A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice; and
 - (B) A record of such certificate, which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be filed and recorded in the land records of the county in which the property lies; and
 - (iii) Fully enclosed areas below the lowest floor are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria;
 - (A) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided,
 - (B) The bottom of all openings shall be no higher than one foot above grade, and
 - (C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.”

Section 10. Section 74-206 of the City Code of Ordinances is hereby deleted and replaced in its entirety with following:

“Sec. 74-206.1 - Single-family structures in a historically modified floodplain areas.

- (a) *New development.* A new single-family residential structure to be located on property encumbered by a historically modified floodplain shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation.
- (b) *Elevating new single-family structures.* If, due to site conditions, a new single-family residential structure cannot comply with the 15-foot horizontal requirement, in accordance with Section 74-206.1(a), the structure shall be constructed to be two feet above the high water mark or three feet above the nearest base flood elevation. Such a structure must also comply with Section 74-206.5(a).
- (c) *Substantially damaged or substantially improved structures.* If an existing single-family residential structure located within the historically modified floodplain has sustained substantial damage or is proposed for substantial improvement, the structure shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation.
- (d) *Elevating existing single family structures.* If, due to site conditions, an existing single-family residential structure cannot comply with the 15-foot horizontal requirement, in accordance with Section 74-206.1(c), the structure may be elevated in accordance with either Section 74-206.5(b) or Section 74-206.5(c); provided however, Section 74-206.5(a) shall apply to all elevated structures regardless of whether Section 74-206.5(b) or Section 74-206.5(c) applies.
- (e) *Flood protecting single-family residential structures.* An existing single-family residential structure that has not been substantially damaged or is not proposed for substantial improvement may be flood protected, in accordance with 74-206.5(d). A new single-family residential structure or an existing single-family residential structure that has been substantially damaged or is proposed for substantial improvement may not be flood protected to comply with the provisions of this Article.
- (f) *Fill in Floodplain.* The placement of fill in the historically modified floodplain area may be allowed if it can be demonstrated that there will be no increase of flood elevation or adverse impacts on any upstream, downstream or adjacent property, and results in no net loss in flood storage volume.
- (g) *Regional Mitigation.* The Demonstration of no increase of flood elevation or adverse impacts on any upstream, downstream or adjacent property, as required pursuant to Section 74-206.1(f), may be achieved by contribution to a regional flood mitigation system located within the same sewer basin as the subject property, subject to approval by the Commissioner.”

Section 11. Section 74-206.2 of the City Code of Ordinances is hereby created and shall read as follows:

“Sec. 74-206.2 - Multifamily structures in historically modified floodplain areas.

- (a) *New development.* A new multifamily residential structure to be located on property encumbered by a historically modified floodplain shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation.

- (b) *Elevating new multifamily residential structures.* If, due to site conditions, a new multifamily residential structure cannot comply with the 15-foot horizontal requirement, in accordance with Section 74-206.2(a), the structure shall be constructed to be two feet above the high water mark or three feet above the nearest base flood elevation. Such a structure must also comply with Section 74-206.5(a).
- (c) *Substantially damaged or substantially improved structures.* If an existing multifamily residential structure located within the historically modified floodplain has sustained substantial damage or is proposed for substantial improvement, the structure shall be located not less than 15 feet horizontally and two feet vertically beyond the nearest base flood elevation.
- (d) *Elevating existing multifamily residential structures.* If, due to site conditions, an existing multifamily residential structure cannot comply with the 15-foot horizontal requirement, in accordance with Section 74-206.2(c), the structure may be elevated in accordance with either Section 74-206.5(b) or Section 74-206.5(c); provided however, Section 74-206.5(a) shall apply to all elevated structures regardless of whether Section 74-206.5(b) or Section 74-206.5(c) applies.
- (e) *Flood protecting multifamily residential structures.* An existing multifamily residential structure that has not been substantially damaged or is not proposed for substantial improvement may be flood protected, in accordance with 74-206.5(d). A new multifamily residential structure or an existing multifamily residential structure that has been substantially damaged or is proposed for substantial improvement may not be flood protected to comply with the provisions of this Article.
- (f) *Fill in Floodplain.* The placement of fill in the historically modified floodplain may be allowed if it can be demonstrated that there will be no increase of flood elevation or adverse impacts on any upstream, downstream or adjacent property, and results in no net loss in flood storage volume.
- (g) *Regional Mitigation.* The Demonstration of no increase of flood elevation or adverse impacts on any upstream, downstream or adjacent property, as required pursuant to Section 74-206.2(f), may be achieved by contribution to a regional flood mitigation system located within the same sewer basin as the subject property, subject to approval by the Commissioner.”

Section 12. Section 74-206.3 of the City Code of Ordinances is hereby created and shall read as follows:

“Sec. 74-206.3 - Non-residential structures in historically modified floodplain area.

- (a) *New development.* A new non-residential structure to be located on property encumbered by a historically modified floodplain shall be located not less than three feet above the base flood elevation or two feet above the highest observed flood.
- (b) *Flood protecting new non-residential structures.* If, due to site conditions, a new non-residential structure cannot be located not less than three feet above the base flood elevation or two feet above the

highest observed flood, in accordance with Section 74-206.3(a), the structure may be flood protected in accordance with Section 74-206.5(d).

- (c) *Substantially damaged or substantially improved structures.* If an existing non-residential structure located within the historically modified floodplain has sustained substantial damage or is proposed for substantial improvement, the structure shall be located not less than three feet above the base flood elevation or two feet above the highest observed flood.
- (d) *Elevating existing non-residential structures.* An existing non-residential structure required to be elevated in accordance with Section 74-206.3(c) may be elevated in accordance with either Section 74-206.5(b) or Section 74-206.5(c); provided however that Section 74-206.5(a) shall apply to an elevated non-residential structure regardless of whether Section 74-206.5(b) or Section 74-206.5(c) applies.
- (e) *Flood protecting non-residential structures.* If, due to structural conditions, an existing non-residential structure cannot be located not less than three feet above the base flood elevation or two feet above the highest observed flood, an existing non-residential structure may be flood protected in accordance with Section 74-206.5(d).
- (f) *Fill in Floodplain.* The placement of fill in the historically modified floodplain may be allowed if it can be demonstrated that there will be no increase of flood elevation or adverse impacts on any upstream, downstream or adjacent property, and results in no net loss in flood storage volume.
- (g) *Regional Mitigation.* The Demonstration of no increase of flood elevation or adverse impacts on any upstream, downstream or adjacent property, as required pursuant to Section 74-206.3(f), may be achieved by contribution to a regional flood mitigation system located within the same sewer basin as the subject property, subject to approval by the Commissioner."

Section 13. Section 74-206.4 of the City Code of Ordinances is hereby created and shall read as follows:

"Sec. 74-206.4 - Ancillary structures and infrastructure in historically modified floodplain areas.

Ancillary structures and infrastructure may be allowed in historically modified floodplain areas if designed and constructed to minimize and mitigate impact on the historically modified floodplain."

Section 14. Section 74-206.5 of the City Code of Ordinances is hereby created and shall read as follows:

"Sec. 74-206.5 - Standards for constructing, elevating and flood protecting structures in historically modified floodplain areas.

- (a) *Basic requirements for elevating structures.* The following requirements apply to the elevation of any structure within a historically modified floodplain area:

- (i) Design and construction of elevated structures shall utilize methods and practices that minimize flood damage and current and future encroachment into the floodway and historically modified floodplain;
- (ii) The elevation of the structure's lowest floor shall be the greater of either: three feet above the base flood elevation or two feet above the highest observed flood;
- (iii) Elevated structures shall be constructed with materials and utility equipment resistant to flood damage in accordance with FEMA Technical Bulletin "Flood Damage-Resistant Materials Requirements" August 2008, or as amended;
- (iv) The area below the lowest floor of an elevated structure shall be flood resistant, unfinished, and designed with piers or wall openings to facilitate the natural flow of floodwaters under the structure;
- (v) The unfinished and flood-resistant area below the lowest floor shall remain unoccupied and shall only be used for parking vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area;
- (vi) Stormwater management facilities and grease traps with backflow prevention devices that are properly designed to be isolated from flood waters may be allowed;
- (vii) The interior portion of the area below the lowest floor shall not be partitioned or finished into separate rooms; provided however, the minimum area necessary for access to upper floors may be finished with flood damage-resistant materials in accordance with FEMA Technical Bulletin "Flood Damage-Resistant Materials Requirements" August 2008, or as amended;
- (viii) Elevated structures shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (ix) Heating and air conditioning equipment and components (including ductwork), electrical, ventilation, plumbing equipment (including water heater), and other service facilities shall be located at least three feet above the base flood elevation or two feet above the highest observed flood (whichever is greater) to prevent water from entering or accumulating within the components during conditions of flooding;
- (x) Designs for complying with the requirements of this Article shall be certified by either a professional engineer or architect;
- (xi) Landings and stairs that allow for the natural flow of floodwaters will be allowed for minimum entry access;
- (xii) If the proposed elevated structure is located in multiple flood zones or if multiple base flood elevations cross the site, the higher or most protective base flood elevation shall take precedence;
- (xiii) The design shall provide for the drainage of floodwaters in not less than 72 hours pursuant to FEMA Technical Bulletin 1 (August 2008); and
- (xiv) A file-stamped copy of an elevation certificate filed in the land records of the county in which the property is located shall be submitted to the Commissioner prior to the issuance of a certificate of occupancy. This elevation certificate shall be prepared by a licensed surveyor and shall document the elevation of the lowest floor relative to mean sea level and compliance with the ordinance.

- (b) *Elevation of existing structure via jacking on existing foundation.* An existing structure that has been substantially damaged or is proposed for substantial improvement may be elevated by jacking, intact, on an existing foundation provided the criteria of Section 74-206.5(a) are met in addition to the following criteria:
- (i) Foundations shall contain a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding as provided in 44 C.F.R. § 60.3 and Section 5 of the Metropolitan North Georgia Water Planning District's Model Floodplain Management/Flood Damage Prevention Ordinance (2006);
 - (ii) The bottom of all openings shall be no higher than one foot above grade; and
 - (iii) Openings may be equipped with screens, louvers or other coverings provided they permit the flow of floodwater in both directions.
- (c) *Elevation of existing structure via demolition and rebuilding on an equivalent footprint area.* An existing structure that has been substantially damaged or is proposed for substantial improvement may be demolished and relocated on the lot such that the passage of water is facilitated or the floodplain is otherwise enhanced or protected provided the criteria of Section 74-206.5(a) are met in addition to the following criteria:
- (i) Foundations shall be designed to resist anticipated hydrodynamic loads, potential for debris impact, and scour pursuant to FEMA Technical Bulletin 1 (August 2008). Foundations shall be designed with the following criteria:
 - (A) The total area of the walls below the base flood elevation exposed to flood waters shall be at least 50 percent open. Wall openings shall be distributed along all walls exposed to flood waters;
 - (B) The bottoms of all wall openings shall be at grade;
 - (C) Garage doors not allowing the natural flow of floodwaters when closed shall not be considered wall openings; and
 - (D) Openings may be equipped with grilles, louvers, or bars provided they allow the natural flow of floodwater in both directions.
 - (d) *Flood protecting structures.* Flood protecting structures within the historically modified floodplain is generally prohibited, unless expressly authorized by the provisions of this Article. If expressly authorized under the provisions of this Article, a structure may be flood protected in accordance with the following criteria:
 - (i) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located three feet vertically beyond the nearest base flood elevation;
 - (ii) Designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, in accordance with the following;

(A) A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice; and

(B) A record of such certificate, which includes the specific elevation (in relation to mean sea level) to which such structures are flood proofed shall be filed and recorded in the land records of the county in which the property lies; and

(iii) Fully enclosed areas below the lowest floor are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria;

(A) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided,

(B) The bottom of all openings shall be no higher than one foot above grade, and

(C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.”

Section 15. Section 74-207 of the City Code of Ordinances is hereby deleted and replaced in its entirety with following:

“Sec. 74-207. - Enforcement.

The Commissioner is authorized to enforce the requirements of this Article in accordance with the procedures set forth in this Section.

- (a) *Violations.* Any person in violation of this Article shall be subject to the general penalty set out in § 1-8 and shall be required to modify or remove the violation to achieve compliance with this Article. Each day during which violation or failure to comply continues shall be a separate violation.
- (b) *Stop work orders.* The Commissioner of the Department of Watershed Management, and the Commissioner of the Department of Planning and Community Development, or their respective designees, are each authorized to issue stop work orders to any person that violates this Article. Stop work orders shall be effective immediately and remain in effect until corrective actions have occurred.
- (c) *Building permit.* If the City of Atlanta determines that a permittee has failed to comply with any provision of this Article, the Commissioner of the Department of Planning and Community Development or said Commissioner's designee may suspend or revoke the building permit.

- (d) *Withhold certificates of occupancy or completion.* The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is authorized to refuse to issue certificates of occupancy or completion for the building or other improvements constructed or being constructed on a site in violation of a stop work order until the owner has taken the remedial measures as set forth in the stop work order, or has otherwise corrected the violations described therein.
- (e) *Flood damaged and unusable structures in a floodplain.* If a structure has been flooded and sustained damage to a degree that renders the structure unusable or uninhabitable, or otherwise presents a threat to public health, safety, welfare and environment, the owner shall repair or demolish the structure. Any such structure that remains in a damaged state for at least twenty-four (24) months shall be declared a public nuisance and may be abated by injunctive or other equitable relief according to the provisions of Article V of this Chapter.
- (f) *Violations deemed public nuisance.* In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this Article that constitute a threat to public health, safety, welfare, and environment may be declared and deemed a nuisance, and may be abated by injunctive or other equitable relief according to the provisions of Article V of this Chapter.”

Section 16. Section 74-208 of the City Code of Ordinances is hereby created and shall read as follows:

“Sec. 74-208. - Relationship to other laws.

- (a) *Compatibility with other regulations.* This Article is not intended to modify or repeal any other ordinance, rule, regulation, statute, easement, deed restriction or other provision of law. The requirements of this Article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this Article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for the riparian environment shall control.
- (b) *Relationship to 42 U.S.C. 4001 et seq.* This Article is enacted pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), 44 C.F.R. § 60.1 et seq., and to implement the requirements of the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 et seq. Words and phrases used in this Article which are defined in the National Flood Insurance Program rules and regulations codified at 44 C.F.R. § 59.1 et seq. and effective December 1, 1976 (41 FR 46968 et seq.), and as they may be revised, shall have the meanings set out in such rules and regulations unless the context in which such words or phrases are used in this Article clearly imports a different meaning, or unless otherwise defined herein.
- (c) *Severability.* If the provisions of any section, subsection, paragraph, subdivision or clause of this Article shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this Article.”

Section 17. Section 74-209 of the City Code of Ordinances is hereby created and shall read as follows:

“Sec. 74-209. - Indemnity Agreements.

The City finds that the construction of new structures, the elevation and flood protecting of existing structures, the installation of a swimming pool or other in-ground water features, or the construction of a parking lot in a special flood hazard area generally will not result in increased flood heights, additional threats to public safety, extraordinary public expense, or the creation of a nuisance. However, as stated in Atlanta City Code Sec. 74-201 (b), such improvements may be subject to inundation under certain conditions. Therefore, prior to the issuance of any permit for construction of a new structure, the elevation of an existing structure, the installation of a swimming pool or other in-ground water feature, or the construction of a parking lot in a special flood hazard area, the owner of the subject property shall execute an indemnification and hold harmless agreement, in a form provided by the City, which shall state at a minimum, that owner shall indemnify and hold harmless the City for any damages or claims for damages, suits, costs, judgments losses, and injuries arising out of the owner's construction, maintenance, use or removal of said improvements. The indemnification shall be filed and recorded in the land records of the county in which the property lies and shall be a permanent covenant running with the land and shall be binding upon the successors in title of the owner."

Section 18. All ordinances in conflict with this ordinance are hereby waived to the extent of the conflict.